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ABSTRACT

Legal aspects of college teaching and administration are discussed. The faculty and college are liable by tort law for students in three ways: intentional acts or interference, strict liability, and negligence. Intentional acts include improperly installed or dangerous equipment, while strict liability cases usually occur where fault is not specifically identifiable, such as when students hurt themselves on ice when there was no adequate protection barriers and warnings. Negligence may occur when there are student injuries without proper supervision of students by faculty members. Another type of negligence action is educational malpractice (i.e., teachers and administrators did not carry out their responsibilities to students and students did not learn what they should have). Specific concerns include proper training of graduate assistants for their responsibilities, management by faculty of health emergencies while exerting caution in administering first aid, and keeping accident reports. The use of religious materials in public classrooms is another concern, along with prayer and bible reading, free speech and expression, and the copyright law. Guidelines to avert adverse legal actions are provided. (SW)

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LEGAL ISSUES AFFECTING FACULTY AND ADMINISTRATORS IN HIGHER EDUCATION

A Paper Presented at the
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INTRODUCTION

College and university professors and administrators in higher education should be aware of the legal aspects of their positions. By knowing what is legal and illegal, constitutional or unconstitutional, adverse legal actions can be avoided. The legal aspects of several dimensions of college teaching and administration are discussed in this paper.

A faculty member or administrator is expected to act as a reasonable and prudent person just like every other citizen, or to face the possibility that civil or criminal action may be brought. Those responsible for children may be liable for two important reasons. First, the school is expected to be a "safe place," second, the courts have established a legal precedent which makes educators liable - the doctrine of in loco parentis (in place of the parent).[1] According to the law, a person can expect certain personal rights including security of life and freedom from injury and other harms. These rights may arise through some contractual agreement for breech of which financial liability may occur. However, liability often occurs outside of contractual arrangements, in which case, the situation may constitute a tort.

A tort is a civil wrong independent of contract. It may be malicious and intentional or it may be the result of negligence and disregard for the rights of others.[2] A tort action may compensate an individual experiencing injury, harm or other

damages because of the unreasonable conduct of another. The compensation is usually in the form of a monetary award. There are three categories of tort action: (1) intentional acts or interference, (2) strict liability and (3) negligence.[3]

Intentional Interference

This category of tort action may be the result of premeditated action, maliciousness, or even a practical joke. In recent years there have been many situations involving intentional torts. One example has been the use of improperly installed or dangerous equipment. The use of such equipment may result in the injury or death of a person. School administrators need to check equipment routinely to be sure that it is properly installed and safe. Other cases of intentional interference have involved teachers giving medicine or medical treatment to students. Teachers should not given any unprescribed medicines such as aspirin to students.

Strict Liability

Strict liability cases usually occur in instances, where fault is not specifically identifiable. In such cases, all who are perceived to have some level of responsibility may be included in tort action. Two examples from which tort action may arise are: (1) exposing students to hazards such as open ditches or dangerous materials or chemicals, (2) failure to provide adequate protection barriers and warnings in ice and snow situations, shops, or bus loading zones.

Generally in cases involving strict liability (i.e., where the specific fault must be determined), a number of persons or agencies may be involved in the tort action. For example, an accident case involving school construction might find the school personnel board members, contractor and/or architectural firm representatives all included in the determination and focus of liability. Fault is not necessarily a prerequisite to liability in such cases, but the courts usually require that the defendant has permitted some unusual hazard to exist.

Negligence

Negligence occurs when harm is caused by an act which should have been foreseen by a reasonable and prudent person in that particular situation. If the accident could not have been prevented through good judgment, then negligence did not occur. Negligence may occur when there is a lack of proper supervision of students by faculty members. Teachers should always supervise students in their charge unless there is an extremely good reason for not supervising. Some teaching activities are obviously more dangerous for student injuries than others. Examples of these are conducting field trips or excursions and supervising students in shops and in laboratory activity. Teachers should require students to observe all safety rules and regulations; proper instructions should be given before students are allowed to use any dangerous equipment or chemicals, or participate in any physical activity which could result in injury. Required safety equipment should be worn

at all times when students are operating equipment for which it is required; all safety guards on machines and equipment should be in place and operating when students use the equipment.

Another type of negligence action which is coming before the courts is educational malpractice. Malpractice suits have charged that teachers and school administrators did not carry out their responsibiilties to students and that students did not learn what they should have during their school careers. The classic case to date in educational malpractice suits is one entitled Peter W. vs. San Francisco Unified School District, which resulted in a decision of the California Court of Appeals in 1976.[4] In this case, Peter W., a boy who had attended school regularly, had not been a discipline problem, and had earned a B-average. His parents had asked teachers throughout his school career how he was doing and were informed that he was making satisfactory progress. After graduating from the San Francisco school system, Peter W. Entered the work world, and soon learned that he was functionally illiterate. His parents sued the San Francisco School System; however, they lost the case. We may find, in future suits of this type, that attorneys will choose to sue individual teachers rather than boards in general, for malpractice, charging that they did not carry out their responsibilities to a specific student.

Although the above mentioned case centered on a public high school situation, similar cases may impact higher education. It is important that faculty members develop and main-

tain clear syllabi for each course taught. Course objectives should be stated and course activities identified. The requirements for each course must be identified, evaluation procedures established and grading techniques formalized. Papers and records should be kept on file. Most colleges and universities have policies concerning this matter.

The council of school law attorneys warned that despite the lack of successes in the past, educational malpractice suit actions are likely to increase during the next few years, with issues in the area of special education leading the way. This is based on the concept of the Education For All Handicapped Children Act, Public Law 94-142, which places a basic duty upon the local boards of education to satisfy adequately the needs of all children.[5]

Graduate Assistants

Graduate assistants provide an important dimension to the instructional program and learning environment within the university community. These assistantships which often include teaching, research and laboratory supervision imply a degree of conservatorship and subsequent liability for negligent acts and irresponsibility. Consequently, graduate assistants are expected to act as reasonable and prudent persons as are all university faculty. If a graduate assistant does not and a student is injured, deprived of a constitutional right, or property is damaged, then an adverse legal action may ensue. The university environment is a place where students may expect

to be free from injury and other types of harm, and the courts have established legal precedents which make educators responsible for their actions.

Graduate assistants provide important services in higher education. It is necessary that they be properly prepared for their duties and responsibilities. A part of their orientation should include pertinent guidelines which should help them avoid legal confrontations.

MEDICAL ISSUES IN THE COLLEGE ENVIRONMENT

Introduction

College students and professors are subject to unexpected illnesses and accidental injuries. Faculty members must be able to manage these health related emergency situations in an effective and legal manner. Therefore, it is important that they be prepared to lend immediate assistance and secure medical help from trained practitioners.

Most colleges and universities have a registered nurse or physician on staff. Even so, contingency plans for medical emergencies or routine services should exist and be reviewed regularly. A contingency plan should include directory information on students and other school personnel, person(s) to notify in the event of an emergency, special medical problems or health conditions of students and others, and any other pertinent information such as religious objections to medical treatment. This information should be maintained in an accessible location. Telephone numbers for ambulance, fire, and police services should be readily available. (Some communities have 911 service).

It is advisable that students and others with special health conditions wear "Medical Alert" bracelets or similar notification of special problems. This may save valuable time in an emergency situation.

Providing Medical Help to Students

School personnel should exercise discretion when attempting to provide first aid assistance to a victim of an accident or sudden illness. Faculty members or administrators should not act as a surrogate physician. No one should provide medical services beyond their level of training and expertise.

Of course, there is an obligation to provide aid to a student in a medical emergency. This is required by law and implied by the doctrine of **in loco parentis** (in place of the parent). In this doctrine, school officials are considered the "responsible superior" and are responsible for the safety and well being of those in their charge. Also, most states have a "Good Samaritan Law" which protects any person who renders emergency care if no charges are made for services performed and there is no evidence of gross negligence.

There is certain information that should be provided to Emergency Medical Technicians (EMT) or attending physicians. This includes the following:

1. The identification of the victim or patient.
2. A description and cause of the injury or illness.
3. Note any signs or symptoms of the injury or illness.
4. Describe any first aid treatment provided.
5. Inform the medical personnel of any special problems

or medication the person may have taken.

6. Provide any other information available (previous history) and let the medical personnel determine its significance.

7. Notify family concerning the incident.

Until an ambulance arrives with trained medical personnel the injured person should be kept comfortable, checked for breathing or serious bleeding, and do not move the person unless necessary.[6] It is recommended that rubber surgical gloves be worn when attending a person who is bleeding. Again, teachers and principals must not exceed their level of first aid training.

Accident Reports

When an accident occurs involving students or other school personnel it is necessary that a record of the incident be established in an accident report. In fact, most colleges require that such reports be completed and submitted to appropriate officials. Procedures for collecting and reporting information vary; however, there is certain basic information that all reports should include. Information for an accident report should be obtained as soon as possible following the accident since important information may otherwise be lost.[7]

A proper accident report should contain adequate biographical and directory information, a description of the accident and related environmental circumstances, date and time of accident, testimony of witnesses, type of injury or illness, care provided, record of family notification, and

any other additional medical data that may be secured from the hospital or attending physician. The use of audio or video recording devices maybe helpful in gathering information pertinent to the accident.

In some situations students with chronic and sometimes contagious diseases are part of the student population. Recently, the question of providing educational services for persons diagnosed as having Acquired Immune Deficiency Syndrome (AIDS) has gained national attention. The National Center for Disease Control in Atlanta[8] recommends that most persons with AIDS be allowed unrestricted access to school attendance. However, not all physicians agree that students having AIDS should be in school.[9] Some believe they should be required to seek other educational options.[10]

Governing bodies should study this issue and develop written policies concerning students with serious medical problems. Such policies should be based on the findings of current medical research and sound educational practice.

In the action oriented environment of colleges and universities thousands of students are injured or become ill during each school year. Additionally, a number of students attend school who have chronic diseases and other health problems. It is vital that professors and college administrators be prepared to cope with medical emergencies and illnesses in a proper and legal manner. Also, it is recommended that school personnel complete first aid training courses.

RELIGION AND FREE SPEECH

Introduction

The use of religious materials in public classrooms continues to be a topic of concern and discussion. Public school students represent a wide range of philosophic persuasions and religious beliefs. Even so, the importance of religious beliefs to most individuals and the effects of religion upon our laws and ethics are commonly accepted realities. It is important for public school instructors to understand the relationship between religion and public institutions in order to ensure that what takes place in classrooms is legal and proper.

Most litigation concerning religion and public schools in the past several years has involved interpretations of portions of the First and Fourteenth Amendments to the United States Constitution. The First Amendment states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof..." The Fourteenth Amendment states "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States..nor deny to any person within its jurisdiction the equal protection of the laws."

The formulators of the Constitution were concerned that the government maintain a neutral position regarding religion, that is, neither promoting nor restricting religious practices. This concept serves as the basis for the doctrine of "Separation of Church and State" - a doctrine which enhances neutrality and deters excessive entanglements between the two. An

attempt to determine this neutral position has been the focus of considerable debate, controversy and legal actions.

Prayer and Bible Reading

Bible reading and prayer have been the two most discussed topics concerning the relationship between religion and public education. Bible reading for religious purposes was deliberated by the U.S. Supreme Court in the Abington School District vs. Schempp case in 1963.[11] The court ruled that the Bible was a sectarian document and that Bible reading for religious purposes violates the "Establishment Clause" of the First Amendment of the U.S. Constitution. The court declared it made no difference from a judicial point of view whether the Bible was read without comment or whether students were excused when their parents objected.

The Supreme Court, in the Schempp case, stated there was no constitutional objection to public school activities such as the study of the literary qualities of the Bible, the study of the Bible as a history book, or the use of the Bible as a reference book. Thus, the guidelines for public school teachers is simply do not read from the Bible (or other such books) to students for religious purposes. However, use the Bible (or other such books) as you would any other literary work in a nonreligious sense. It is certainly legal to have a copy of the Bible in a public school classroom.

The use of prayer in public school classrooms has been adjudicated in several U.S. Supreme Court cases. The use of

the Lord's Prayer (or "Our Father") in public schools at the beginning of the school day was declared illegal by the Abington v. Schempp decision in 1963. The Schempp case established a general test to determine the constitutionality of religious practices in public schools. One should attempt to answer the question "Does the proposed practice inhibit or promote religion?"[12]

Few legal opinions have been more misunderstood or misinterpreted than the Supreme Court's decisions concerning prayer and Bible reading in public schools. It is a common belief that the Court "banned" prayer and Bible reading. Actually, the Court held unconstitutional those practices which infringed on religious liberty and violated the concept of separation between church and state, a guarantee of the First Amendment of the U.S. Constitution.

The Bible may be used in selected ways in the public schools. Some examples are: The Bible may be used as a reference work for teaching secular subjects; taught as literature style; as an historical reference; a tool in the study of political science; or a comparative study of religions.

There is no constitutional objection to singing the National Anthem or patriotic hymns which may include the composer's profession of faith in God. Other patriotic activities such as the Pledge of Allegiance to the flag or reciting the Declaration of Independence are permissible.

Using Religious Materials

Based on legal precedents the following general guidelines are suggested to ensure the proper use of religious materials in public schools:

1. Religious materials should not be used to promote a specific religion in the public schools.
2. Prayer and Bible reading for religious purposes should not be permitted on public school property.
3. The Bible or other religious materials may be used in public schools as reference material for literacy and historical investigation.
4. The Bible and other religious publications may be used for instruction in comparative religions.
5. Patriotic activities such as the Pledge of Allegiance to the Flag or singing the National Anthem are legitimate practices.

Free Speech

Free speech and expression are not absolute guarantees but are tempered by reasonable restrictions. The First Amendment imposes three standards on state institutions:

1. Expression cannot be prohibited because of disagreement with or dislike for its contents; (2) expression is subject to reasonable and nondiscriminatory regulations of time, place and manner; (3) expression can be prohibited if it takes the form of action that materially and substantially interferes with the normal activities of the institution or invades the rights of others. (Wright v. Texas Southern University)

A university may regulate the time, place and manner of speeches by outside persons - but not the content of such speeches. Only those speeches which pose a clear and present danger may be limited. The clear and present danger doctrine allows a university to deny an invitation to a guest speaker if it reasonably appears that in the course of his speech he would advocate:

(1) Violent overthrow of the government of the United States, the state, or any political subdivision, thereof;

(2) Willful destruction or seizure of the institution's buildings or other property;

(3) Disruption or impairment, by force, of the institution's regularly scheduled classes or other educational functions;

(4) Physical harm, coercion, intimidation, or other invasion of lawful rights of the institution's officials, faculty members, or students; or

(5) Other campus disorder of a violent nature.

(Stacy v. Williams 306 F.Supp. 963, 5 ALR Fed, 814(1969).

The university cannot accept some speakers and arbitrarily reject others.

COPYRIGHT LAW

Substantial changes were made in the Copyright Law of 1909 effective January 1, 1978. The new law directly impacts

classroom practices in higher education. The law limits what may be copied and the conditions and purposes of copying print and nonprint materials.

There are certain factors about the new law that should be considered. The duration of a copyright is now the life of the author plus 50 years and a term of 75 years for anonymous works. The Fair Use Doctrine permits the reasonable use of copyrighted material without the consent of the author or copyright holder. A part of this concept allows teachers to make single copies for their personal use or multiple copies for classroom instruction. Numerous other restrictions apply, and teachers should review the new copyright law in detail since there are rather severe penalties for violations.[13]

Computer software is protected by the copyright law. Software acquired by colleges and universities is usually licensed. The license restricts how and where the software is used. It is illegal for a faculty member to copy software for distribution among members of a class without permission of the author or publisher. Restrictions on the use of software are not uniform, and a software user should check with publishers and software developers before copies are made.[14]

SUMMARY

The following guidelines are provided to help diminish the possibility of adverse legal actions:

1. Provide proper and adequate supervision of all students at all times.

2. Adhere strictly to all safety requirements for each learning activity.
3. Maintain a "business-like" atmosphere in the classroom, laboratory or wherever university activities take place.
4. Consider the experience and level of preparedness of students when selecting and implementing learning activities.
5. Continguency plans should be developed to cover emergency situations.
6. Students should be advised of potential dangers or hazards associated with teaching aids, equipment, action-oriented activities or the physical environment.
7. The emergency evacuation plan for the building should be conspicuously posted and explained to students.
8. Instructional equipment and teaching aids should not be used unless all safety features are operable.
9. Report an accident or injury to the departmental chairman immediately.
10. Have access to emergency telephone numbers at all times.
11. Do not allow "horseplay" or permit unruly conduct by students.
12. Secure adequate liabiilty insurance protection.
13. Prepare carefully detailed reports on all accidents.
14. Use good common sense at all times.

REFERENCE NOTES

[1]M. Chester Nolte, Nolte's School Law Desk Book, Parker Publishing Company, West Nyack, New York, 1980, p. 63.

[2]Kern Alexander, School Law, West Publishing Company, St. Paul, Minnesota, 1980, p. 689.

[3]Ibid, p. 689.

[4]Peter W. vs. San Francisco Unified School District, 60 Cal.App.3d 814, 131 Cal.Rptr.854(1976).

[5]"New Laws May Open the Door to Malpractice Suits," Phi Delta Kappan, Oct., 1980, Vol. 62, 153.

[6]American Academy of Orthopaedic Surgeons. Emergency Care and Transportation of the Sick and Injured. Menasha, Wisconsin: George Banta Co., Inc. 1986, p. 383.

[7]Ibid., p. 383.

[8]Cranston-Gingras, Ann M. "AIDS and School Children: An Issue of Educational Equity." Kappa Delta Pi Record 23 (Winter 1987), 37.

[9]Reed, Sally. "AIDS in the Schools: A Special Report." Phi Delta Kappan 67 (March 1986), 497.

[10]Ibid.

[11]School District of Abington Township v. Schempp, 374 U.S. 203 (1963).

[12]Ibid.

[13]American Library Association. The New Copyright Law: Questions Teachers and Librarians Ask. Washington, D.C.: National Education Association, 1977.

[14]Using Software: A Guide to the Ethical and Legal Use of Software for Members of the Academic Community. Princeton, N.J.: EDUCOM, 1987.